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Supreme Court, U.S.
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No. 02-996

# In The Supreme Court of the United States

OVERNITE TRANSPORTATION COMPANY,

*Petitioner,*

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSE AND HELPERS OF AMERICA, AFL-CIO, et al.,

*Respondents.*

**On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, First District**

## MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to S. Ct. Rule 37.2, the Chamber of Commerce of the United States ("Chamber") respectfully moves for leave to file a brief *amicus curiae* in support of the Petition for a Writ of Certiorari to the Appellate Court of Illinois, First District. A copy of the proposed brief is attached. The Chamber is filing this Motion because Respondents have either refused to consent to the filing of this brief or have failed to respond to telephone calls requesting consent. In support of this Motion, the Chamber notes the following:

The Chamber is the world's largest federation of business companies and associations, with an underlying membership of nearly three million businesses and professional organizations of every size, in every industry sector, and every region of the country. An important function of the Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of concern to American business.

Many of the Chamber's members are employers subject to the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 157 *et seq.* Chamber members have a substantial interest in the issue presented in this case, *i.e.*, whether a state court may bar an employer from seeking recompense for a monetary loss solely because it filed a charge with a federal agency that cannot award monetary relief.

The Chamber regularly files briefs as *amicus curiae* or as a party in cases such as this one that raise issues of vital concern to the business community regarding

important constitutional and labor law issues. *See, e.g., Nike, Inc. v. Kasky*, 27 Cal. 4th 939, 45 P.3d 243 (2002), *cert. granted*, 71 U.S.L.W. 3470 (U.S. Jan. 10, 2003) (No. 02-575); *State Farm Mutual Automobile Ins. Co. v. Campbell*, 2001 UT 89; 432 Utah Adv. Rep. 44 (2001), *cert. granted*, 70 U.S.L.W. 3741 (U.S. June 3, 2002) (No. 01-1289); *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002); *McClatchy Newspapers, Inc. v. NLRB*, 131 F.3d 1026 (D.C. Cir. 1997), *cert. denied*, 524 U.S. 937 (1998); *Altemose Construction Co. v. Building & Construction Trades Council*, 751 F.2d 653 (3d Cir. 1984), *cert. denied*, 475 U.S. 1107 (1986).

The ramifications of this case are far broader than the impact on Overnite Transportation Company, as any of the Chamber's members who are victims of union violence could be forced to choose between pursuing their rights under state tort law or obtaining remedies granted under the NLRA. Moreover, this case arose in Illinois, a state where a significant number of major corporations are headquartered. The Chamber is concerned about the ability of its members to obtain monetary reimbursement for violence caused during labor disputes without forfeiting any rights granted under the NLRA. The Chamber submits that its views on these issues would be useful to the Court in determining whether to grant the Petition, and in deciding the issues posed in the event that review is granted.

Accordingly, the Chamber respectfully moves the Court to grant this Motion and allow the filing of the attached brief.

Respectfully submitted,

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## QUESTION PRESENTED

The Chamber adopts and incorporates by reference the Petitioner's Question Presented.

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## INTEREST OF THE *AMICI*

The Chamber of Commerce of the United States ("Chamber") is identified in the preceding Motion for Leave to File.[1] Its interest in this matter is also expressed in that Motion and in the Summary of the Argument section below, and thus will not be restated at further length here.

## STATEMENT OF THE CASE

Overnite Transportation Company ("Overnite" or "Petitioner") is a common carrier of freight with a service center in Bedford Park, Illinois. Respondents are the International Brotherhood of Teamsters, Phil Young, its Director of Freight Operations, and several Teamster Local Unions, including Local Union No. 705, the bargaining representative of certain employees at Overnite's Bedford Park facility (collectively "Respondents").

On June 15, 1999, a mob of almost 200 people, including certain Respondents, met at the Bedford Park facility and blocked the road to the service center. They damaged a security guard's truck while the guard attempted to pass through the crowd. Certain Respondents then marched through the main gate of the service center, past the "no trespassing" signs, carrying axe handles disguised as picket signs. When denied entrance onto the property, certain Respondents forced past the security guards,

[1] Pursuant to Sup. Ct. Rule 37.6, the Chamber asserts that neither Petitioner nor Respondent assisted the Chamber or its counsel, in any way, even with expenses, in preparing or submitting this brief.

shoving one guard and forcing the other to the ground. Certain Respondents then paraded around the service center, threatening managers and employees and shouting obscenities.

Overnite filed an unfair labor practice with the National Labor Relations Board ("Board") immediately, and filed an amended charge on June 23, 1999. On July 14, 1999, Overnite filed a Complaint in the Circuit Court of Cook County, Illinois, alleging that Respondents' actions on June 15 harmed Overnite. The Complaint specifically alleged that Respondents' actions constituted unlawful trespass, tortious interference with Overnite's existing customer relationships and prospective relationships, and conspiracy against Overnite in order to either force Overnite's employees to accept Teamster representation against their will and force Overnite to accept a Teamsters-dictated contract, or put Overnite out of business. Overnite requested monetary relief for these damages.

The Circuit Court of Cook County dismissed Overnite's civil court claims pursuant to Section 2-619(a)(3) of the Illinois Code of Civil Procedure. This rule allows courts to dismiss an action if there is "another action pending between the same parties for the same cause." 735 ULCS 5/2-619(a)(3). On appeal, the Illinois Appellate Court agreed with the Circuit Court's dismissal of Overnite's claims. The Supreme Court of Illinois refused to review the matter and denied Overnite's Petition without opinion.

A complete recitation of the facts may be found in Overnite's Brief.

## SUMMARY OF THE ARGUMENT

Overnite Transportation Company has petitioned for a writ of certiorari to the Appellate Court of Illinois, First District, on the grounds that that court's decision in *Overnite Transportation Co. v. International Brotherhood of Teamsters* on June 19, 2002, conflicts with precedents of this Court holding that a state court may not interfere with federal rights granted under the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 157 *et seq.* The Chamber agrees and urges the Court to grant this petition.

The Illinois court has applied Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), to prevent Overnite from recovering any remedy for damages suffered as a result of violent union activity. The state court dismissed Overnite's claims solely because Overnite had already filed a charge with the Board based on the same conduct. In doing so, the state court is requiring parties to forfeit federal rights, including the ability to ask the Board to issue a cease and desist order, in order to obtain state remedies. This is in conflict with this Court's interpretation of the Supremacy Clause of the United States Constitution as shown in *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967) and *Livadas v. Bradshaw*, 512 U.S. 107 (1994).

In addition, the Illinois Appellate Court's decision is inconsistent with congressional intent to allow parties to pursue unfair labor practice charges and other remedies. When considering the Taft-Hartley amendments to the NLRA in 1947, Congress made clear that, "when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to,

and not in lieu of, other remedies." H.R. CONF. REP. NO. 510, at 1158 (1947). To allow otherwise will create an imbalance of bargaining power. If an employer is prohibited from filing a claim in state court for damages caused by union violence simply because the employer has filed a charge with the Board, that employer is left with no ability to obtain monetary compensation for its loss. On the other hand, if an employer forgoes filing an unfair labor practice charge with the Board in order to be able to file a claim in state court for damages, those unfair labor practices will go unreported, and the Board will not be able to provide remedy to the employer or its employees. Either option gives increased power to the party utilizing violence and is in clear violation of the NLRA's purpose to promote peaceful labor management relations.

## REASONS FOR GRANTING THE WRIT

### I. The Court Should Grant Certiorari Because The Illinois Appellate Court's Dismissal Of Petitioner's State Law Claims Violates The Supremacy Clause Of The United States Constitution And Conflicts With Prior Holdings Of This Court.

This case presents the question of whether a state can eliminate a plaintiff's right to seek monetary damages solely because the plaintiff has filed a federal unfair labor practice charge against the defendant. While states certainly are permitted to pass statutes to avoid duplicative actions and to preserve their judicial resources, this Court has held that, under the Supremacy Clause of the United States Constitution, states may not use such statutes to burden one's exercise of federal rights.

The Illinois Appellate Court's application of Section 2-619(a)(3) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619(a)(3), however, requires parties to choose between obtaining relief under state tort law or exercising federal rights granted under the National Labor Relations Act ("NLRA"). 29 U.S.C. §§ 151 *et seq*. This interpretation violates both the Supremacy Clause and this Court's holdings in *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967) (holding that state law cannot be applied to interfere with federal labor law rights) and *Livadas v. Bradshaw*, 512 U.S. 107 (1994) (same). This Court should grant review to resolve the conflict between the Illinois Appellate Court's decision and the holdings of this Court in *Nash* and *Livadas*. *See William E. Arnold Co. v. Carpenters District Council*, 417 U.S. 12, 14 (1974) (granting review when the Florida Supreme Court's holding was inconsistent with prior Supreme Court decisions).

In *Nash*, this Court invoked the Supremacy Clause[2] and held that the Constitution does not allow state courts to force claimants to choose between filing an unfair labor practice charge and pursuing state law remedies. In that case, the Florida Industrial Commission held that an individual was ineligible to receive state unemployment compensation because she had filed an unfair labor practice charge with the Board. Such a result, however, burdened the employee's federal labor rights, as it required her to forfeit her federal labor law claims in order to

[2] The Supremacy Clause states that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof, . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . . " U.S. CONST., art VI, cl. 2.

obtain unemployment compensation. This Court held that such an application of the Florida statute violated the Supremacy Clause. In so holding, this Court followed the "unbroken rule" of the Supremacy clause established in 1819 in *McCulloch v. Maryland*:

> In *McCulloch v. Maryland*, 4 Wheat. 316, 436, decided in 1819, this Court declared the States devoid of power to "retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." In *Davis v. Elmira Savings Bank*, 161 U.S. 275, decided in 1896, this Court declared that a state law cannot stand that "either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the Federal government to discharge the duties, for the performance of which they were created." *Id.* at 284. And again in *Hill v. Florida*, 325 U.S. 538, 542-543, decided in 1945, this Court struck down a labor regulation saying it stood "as an obstacle to the accomplishment and education of the full purposes and objectives of Congress . . . ." *Id.* at 542.

*Nash*, 389 U.S. at 443.

This Court applied the same rationale almost twenty-five years later in *Livadas* when ruling that the California State Commissioner of Labor violated the Supremacy Clause in refusing to enforce wage payment provisions on behalf of individuals whose terms and conditions of employment were governed by a collective bargaining agreement. In barring enforcement claims for represented individuals, the California State Commissioner of Labor required a claimant to choose between pursuing a state

law remedy and filing a charge with the Board. This choice "was not intended by Congress . . . and cannot ultimately be reconciled with a statutory scheme premised on the centrality of the right to bargain collectively and the desirability of resolving contract disputes through arbitration." *Livadas,* 512 U.S. at 117 (citations omitted).

In the present matter, the Illinois Appellate Court has applied Section 2-619(a)(3) of the Illinois Rules of Civil Procedure in a way that forces a party to choose between pursuing a state law claim and filing a charge with the Board. Dismissing Overnite's state law tort claims simply because Overnite has filed a charge with the Board is in direct violation of the holdings in *Nash* and *Livadas* as well as in conflict with this Court's reading of the Supremacy Clause.

Under this application of Section 2-619(a)(3), a party suffering economic damages as a result of violence or other illegal activity in a labor dispute will never be able to obtain monetary compensation in state court and also file a charge with the Board (possibly leading to an enforceable cease and desist order as well as other relief), since filing a charge with the Board precludes one from filing a claim in state court. As a result, unless the damages suffered by the aggrieved party are *de minimus*, a party will almost always favor obtaining reimbursement for losses versus relief under the NLRA. Contrary to this Court's holding in *Davis*, the Illinois Appellate Court's application of Section 2-619(a)(3) "impairs the efficiency of these agencies of the Federal government," in this case the Board, by forcing parties to forfeit their right to obtain remedies from the Board, such as a cease and desist order, in order to obtain reimbursement for monetary loss. *Davis*,

161 U.S. at 283 (holding that state banking law conflicts with federal law for national banks).

Furthermore, the result in this case is even more severe than that in *Nash*, since in *Nash* the state's action *delayed* the remedy, while in this case, the state's action *completely eliminates* a remedy. In *Nash*, the plaintiff sought both back pay and unemployment compensation. The plaintiff would have been entitled to a back pay award from the Board even if she had not been able to file her unemployment compensation claim.[3] In the present case, however, Overnite, even if successful before the Board, will never have the opportunity to obtain compensation for its property damage and other damages. This complete denial of a federal remedy in order to pursue a state tort claim is clearly limiting a federal right in violation of the Supremacy Clause.

In its decision, the Illinois Appellate Court appeared to recognize that the Supremacy Clause and relevant cases prohibit a state court from limiting a claimant's federal rights. The court stated "[n]othing in section 2-619(a)(3) [of the Illinois Code of Civil Procedure] prevents a party from

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[3] While not analogous with *Nash* on this point, *Livadas* also presents a situation of lesser consequence than the case at hand. In *Livadas*, the plaintiff filed a claim with the Labor Commissioner because her final paycheck was not paid in accordance with the California's wage payment statute. The plaintiff was, in fact, paid in full a few days later. In forfeiting her wage payment claim, plaintiff forfeited the punitive damages assessed against the employer for late payment of her final paycheck, but she would have received her final paycheck under either the wage payment act or through the Board's award, even though the Board's award may not have included the punitive element.

pursuing various forms of relief." (Pet. App. 15.) However, this statement cannot be reconciled with the court's dismissal of Overnite's claims and the court's prior statement in the same decision that "once [Overnite] chose to pursue the Board proceeding first, it was bound by the relief offered in that forum, which does not include monetary compensation." (Pet. App. 13.) These two statements are fundamentally inconsistent.

## II. The Court Should Grant Certiorari Because The Illinois Appellate Court's Application Of Section 2-619(A)(3) Of The Illinois Rules Of Civil Procedure Interferes With Express Congressional Intent To Allow Parties To Pursue Other Remedies.

In enacting the NLRA, Congress empowered the Board to "prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce." 29 U.S.C. § 160(a). In doing so, however, Congress specifically provided that "[t]his power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." *Id.*

This language appeared in the original NLRA enacted in 1935. Despite numerous amendments, Congress has made a conscious decision to retain this language in the statute. When Congress considered the Taft-Hartley amendments to the NLRA in 1947, the House passed a bill omitting from Section 10(a) the above language that allowed for "other means of adjustment or prevention." H.R. CONF. REP. NO. 510, at 1158 (1947). The Senate bill, however, retained this language. *Id.* The Conference agreement, which was later enacted, adopted the Senate

version of the bill, with the Committee of Conference recognizing that,

> [b]y retaining the language which provides the Board's powers under section 10 shall not be affected by other means of adjustment, the conference agreement makes clear that, when two remedies exist, one before the Board and one before the courts, *the remedy before the Board shall be in addition to, and not in lieu of, other remedies.*

*Id.* (emphasis added). By keeping this language, it is clear that, while Congress intended the NLRA to make the Board's jurisdiction over labor matters exclusive, Congress did not intend to preclude a party from pursuing other forms of relief, when actions so warrant, simply because the party elects to seek remedy under the NLRA.

The decision to allow other remedies is consistent with the purpose of the NLRA, which is to promote equal bargaining power and peaceful negotiations so that employers and employees may come to mutually agreeable terms. *H. K. Porter Co. v. NLRB*, 397 U.S. 99, 104 (1970) (holding that the Board has the power to compel employers and employees to negotiate, but the NLRA does not require either party to agree to particular provisions of a collective bargaining agreement.) *See also Nash*, 389 U.S. at 238 (stating that "all persons with information about [unfair labor] practices [ ] be completely free from coercion against reporting them to the Board.") Prior to the enactment of the NLRA, and even until several subsequent amendments, extremely violent and destructive labor disputes were endemic to the labor movement. In drafting the NLRA, Congress was well aware of the violence that penetrated labor-management relations, and clearly the language of the NLRA reflects Congressional intent to

balance the interests and powers of employers and employees to promote peaceful resolution of labor disputes. *See* 29 U.S.C. § 151 (encouraging "practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions."). Although the framework of the NLRA provides a structure for peaceful resolution of labor disputes, nothing in the NLRA allows for an employer, employee or union to obtain reimbursement for personal or property damage caused by violent activity. As recognized by this Court, "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. [T]o cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation." *United Workers v. Laburnum*, 347 U.S. 656, 663-64 (1954) (allowing state court to award damages for tortious conduct in labor dispute). Further, this Court later held that "the policy of actual or threatened violence to persons, or the destruction of property, has been held most clearly to be a matter for the states to regulate." 2 SECTION OF LABOR & EMPLOYMENT LAW, AMERICAN BAR ASSOCIATION, THE DEVELOPING LABOR LAW 2211 n.225 (Patrick Hardin and John E. Higgins, Jr., eds., 4th ed. 2001) (citing *Machinists Lodge 76 v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976)).

While the purpose of the NLRA is to promote peaceful labor negotiations, the threat of labor dispute violence continues to be real, and potentially expensive, for many employers. *See, e.g., Altemose Construction Co. v. Building & Construction Trades Council*, 751 F.2d 653 (3d Cir. 1984) (noting that trial court described actions by a mob of 1,000 union members as a "virtual military assault" on an

employer, causing damages of $300,000); *Laburnum*, 347 U.S. at 656 (union and agents threatened employees with violence such that employer needed to shut down all projects for fear of employee safety); *Prater v. United Mine Workers of America*, 793 F.2d 1201 (11th Cir. 1986) (stating that during strike union members badly damaged employer's mine equipment and threatened non-union employees with clubs and guns, causing work at the mine to stop); *Solo Cup Co. v. Int'l Bhd. Of Pulp, Sulphite and Paper Mill Workers, AFL-CIO*, 237 Md. 143, 205 A.2d 213 (Ct. App. Md. 1964) (holding that state court had jurisdiction to hear tort claims for actions previously found by the Board to be unfair labor practices when union threatened employees, damaged employer's property, and damaged personal property of employees by slashing car tires, throwing paint on vehicles, and using firearms to shoot at homes and cars).

Likewise, cutting off the ability of a party to recover damages caused by violent acts during a labor dispute will also empower the opposing party to benefit from these violent, destructive actions. By requiring parties to choose between filing a charge with the Board and seeking compensation under state tort law for damage due to violence, the Illinois Court of Appeals is, in essence, giving strength to violence as a form of coercion in labor relations. This is in direct conflict with the purpose and intent of the NLRA, which was enacted to promote peaceful labor management relations.

In other words, the Illinois court's application of Rule 2-619(a)(3) allows either party to use threats and violence to obtain collective bargaining or representation election goals without fear of incurring monetary loss. Building on

the facts of the particular case at hand, during a representation campaign, a union may use violence or threats of violence to coerce employees to accept union representation. Further, the union may cause damage to employer property in an attempt to coerce the employer to recognize the union and incorporate specific contract terms. If employees vote in favor of the union because they feel threatened, the union has gained significant power by virtue of exerting threats, while the employer must choose between obtaining monetary reimbursement in state court for damages and obtaining remedy from the Board for those employees who voted for the union as a result of threats or violence.

In the above scenario, the party using threats and violence would gain significant power within the labor and management structure. Predictably, parties will elect to file state claims instead of charges with the Board since the Board cannot award compensation for damages. By forcing the parties to forfeit their labor law rights in order to file a state tort law claim, the Illinois Appellate Court allows a violent party to achieve collective bargaining goals without suffering any repercussions under the framework of the NLRA. This is clearly against the Congressional purpose of the NLRA, which was to promote peaceful labor management relations and to encourage parties to feel free to file reports of violations with the Board.

## CONCLUSION

For the foregoing reasons, *amicus curiae* Chamber of Commerce of the United States respectfully asks this Court to grant Overnite's writ of certiorari.

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